

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 27.04.2000 and order of sentence dated 28.04.2000 passed by the 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 119 of 1998)

Criminal Appeal (SJ) No.147 of 2000

Mohan Bhagat, son of Shiv Nandan Bhagat, resident of village-Chand Chapra, P.S.-Goroul, Distt. Vaishali.

.... Appellant/s

Versus

State Of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 168 of 2000

Raghu Rai, son of Ayodhya Rai, resident of village Patrapurgawrihar (Tola Kamata), P. S. Sakra O.P. Bariarpur, Distt. Muzaffarpur.

.... Appellant/s

Versus

State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 147 of 2000)

For the Appellant/s : Mr.

For the Respondent/s : Mr. C. Jawahar- A.P.P.

(In CR. APP (SJ) No. 168 of 2000)

For the Appellant/s : Mr.

Mr. Manish Kr.Saran

Mr. Jitendra Narain Sinha

For the Respondent/s : Dr. Indihar Kumari- A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT

Date: 29-01-2014

Anjana Prakash, J.

On the last occasion, the appeals were directed to be

listed for hearing but without the lower Court records. Since these appeals are of the year 2000, to be disposed of with the assistance of the record produced by the counsel for the appellant.

2. The appellants have been convicted for the offence under Section 395 of the I.P.C. and sentenced to undergo

rigorous imprisonment for five years by judgment dated 27.04.2000 passed by the 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial no.119 of 1998.

3. The case of the prosecution according to the informant is that on 08.06.1997 at 11.45 p.m. while family members of informant was sitting around in the courtyard and singing song on the occasion of marriage of his sister. Some unknown dacoits entered into their house and committed dacoity. They identified and named the present Appellants.

4. The defence of the Appellants, who are co-villagers, is of total denial and that they have been falsely implicated for reasons of enmity.

5. During trial, prosecution examined nine witnesses out of whom PW-9 is a formal witness. PW-1 Amarnath brother of informant, PW-2 Fakira Rai, PW-3 Girwar Singh, PW-4 Ram Prasad Paswan, PW-5 Rajendra Rai, PW-6 Munshi Rai, PW-7 Sarita Devi and PW-8 Ranjit Rai who are the family members of the informant.

6. From the evidence of these witnesses, it appears that the appellants were identified during the course of dacoity and identified even during trial.

7. However, the defence examined one photographer

namely Sumit Kumar.

8. The simple point raised on behalf of the appellants is that they are agriculturists having good amount of landed property in the village, which is an admitted position and before the date of alleged occurrence Appellant Raghu Rai had purchased 14 Katthas of land from PW-2 father of the informant. In these circumstances, it appears highly unlikely that the Appellants with sufficient means would commit dacoity in the house of their co-villagers without taking precaution of concealing their identity.

9. I am inclined to accept such submission. Hence, giving benefit of doubt to the appellants. The appeal is allowed. The appellants are acquitted of the offence punishable under Section 395 of the I.P.C. and they are also discharged from the liabilities of their bail bonds.

10. The judgment and order of conviction dated 27/28.04.2000 in Sessions Case no.119 of 1998 passed by the 3rd Additional Sessions Judge, Muzaffarpur is set aside.

(Anjana Prakash, J)

Vikash Verma/-